

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

IN RE:

**JOHN H. HAMILTON, SR.,

DEBTOR.**

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**Case No. 10-35770
(Chapter 7)**

RONALD J. SOMMERS, TRUSTEE

Plaintiff,

v.

JOHN H. HAMILTON, SR.

Defendant.

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Adv. Cause No. _____

**TRUSTEE'S COMPLAINT OBJECTING TO DISCHARGE OF
DEBTOR, JOHN H. HAMILTON, SR.**

NOW COMES, Plaintiff, Ronald J. Sommers, Trustee of the Estate of John H. Hamilton, Sr., ("Trustee") and files this Complaint Objecting to Discharge of the Debtor, John H. Hamilton, Sr.

I.

Introduction

1. This adversary proceeding is brought against the Debtor, John H. Hamilton, Sr. ("Debtor") under Fed. R. Bankr. P. 7001. By this adversary proceeding, the Trustee objects to the discharge of the Debtor pursuant to section 727(a) of Title 11 of the United States Code (the "Bankruptcy Code").

II.

Jurisdiction and Venue

2. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C.

§§ 157 and 1334. This adversary proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(J). Venue of this adversary proceeding is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicate for the relief requested herein is section 727 of the Bankruptcy Code.

III. Parties

3. Plaintiff is Ronald J. Sommers, Chapter 7 Trustee in the above-captioned bankruptcy case.

4. Defendant is John H. Hamilton, Sr., Debtor in the above-captioned bankruptcy case. Debtor may be served with process by mailing a copy of the summons and complaint to the Debtor at P.O. Box 115, Simonton, TX 77476, the address shown in his voluntary petition, and by mailing a copy of the summons and complaint to Debtor's attorney, Calvin Braun, at 3401 Allen Parkway, Suite 101, Houston, TX 77019.

IV. Procedural Background

5. On July 6, 2010 (the "Petition Date"), the Debtor filed a Voluntary Petition for relief under Chapter 11 of the Bankruptcy Code.

6. On August 17, 2010, the Court issued its Order Requiring Debtor to Appear and Show Cause Why a Chapter 11 Trustee Should Not Be Appointed or Converted to Chapter 7 [Doc. No. 57] (the "Show Cause Order").

7. A hearing was held on the Show Cause Order on September 7, 2010, and the Court concluded that the appointment of a Chapter 11 Trustee was appropriate.

8. On September 9, 2010, the Court entered its Order Appointing Chapter 11 Trustee authorizing and directing the United States Trustee to appoint a Trustee [Doc. No. 86]. Ronald J.

Sommers was appointed as the Chapter 11 Trustee.

9. On October 15, 2010, the Trustee filed his Unopposed Motion to Convert to Chapter 7 [Doc. No. 121] (the “Conversion Motion”).

10. A hearing was held on the Conversion Motion on October 26, 2010, and the Court entered its Order Granting Trustee’s Unopposed Motion to Convert to Chapter 7.

11. On November 1, 2010, Ronald J. Sommers was appointed Chapter 7 Trustee of the Debtor’s Estate.

V.
Relief Requested

12. Trustee requests that the Court deny the discharge of Debtor under section 727(a) of the Bankruptcy Code.

VI.
Causes of Action

A. *11 U.S.C. § 727(a)(2) – Denial of Discharge*

13. Debtor, with intent to hinder, delay, or defraud creditors and the Trustee, has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed property of the estate after the date of the filing of the petition.

14. Specifically, Debtor transferred and/or permitted to be transferred an interest in the following properties to Excel Mortgage Corporation after the Petition Date:

- The West 85 feet of Lot 1, Block 9, County Block 5848, Larkwood, in the City of Terrell Hills, Bexar County, Texas, according to the plat thereof recorded in Volume 2222, Page 354, Deed and Plat Records of Bexar County, Texas and commonly known as 100 Bryker Drive, San Antonio, Bexar County, Texas 78209-6008 (the “San Antonio Property”); and
- Lot 8, Block 14, Section 4, further known as 33203 Westleton Court, Fulshear, Texas 77441 (The “Westleton Property”).

15. Although the San Antonio Property and Westleton Property were purchased in Patricia Hamilton's name, the wife of the Debtor, the San Antonio Property and Westleton Property were property of the estate. All legal or equitable interest of the Debtor in property as of the commencement of the bankruptcy case, including all interests of the Debtor and the Debtor's spouse in community property, is property of the estate. 11 U.S.C. § 541.

16. The Debtor and Mrs. Hamilton have been married approximately twenty years. Throughout their marriage, the Debtor and Mrs. Hamilton have resided in Texas. The Debtor and Mrs. Hamilton have never entered into any written premarital or marital property agreements whereby they agreed that property would be Mrs. Hamilton's separate property.

17. For the past seven years of their marriage, Mrs. Hamilton would receive a \$4,000 per week allowance from the Debtor (the "Allowances"). This adds up to almost \$1,500,000 that was conveyed by the Debtor to Mrs. Hamilton as admitted to by Mrs. Hamilton. The Debtor showed none of these transfers on his Statement of Financial Affairs. The Debtor received nothing in return for the Allowances. Mrs. Hamilton testified she kept these Allowances as cash at her residence.

18. Mrs. Hamilton used the Allowances to purchase and pay for the San Antonio Property and the Westleton Property.

19. Post-petition, the Debtor and Patricia Hamilton entered into a contract to purchase Lot 4, Block 4, Fulbrook Section 3A, Fort Bend County, Texas, more commonly known as 31503 Blue Heron Ln., Fulshear, Texas 77063 (the "Blue Heron Property") for \$750,000.00.

20. On October 8, 2010, Patricia Hamilton executed the following documents:

- a. a promissory note for the principal amount of \$700,000.00 in favor of Patriot Bank ("Patriot").

- b. a Deed of Trust in favor of Patriot on the Blue Heron Property.
- c. a promissory note for the principal amount of \$300,000.00 in favor of Excel.
- d. a Second Lien Deed of Trust in favor of Excel on the Blue Heron Property and the San Antonio Property.

21. Prior to granting of the Second Lien Deed of Trust in favor of Excel, the Debtor and Mrs. Hamilton held equity in the San Antonio Property. Excel further contends that the Second Lien Deed of Trust extends to the Westleton Property.

22. The president and majority shareholder of Excel Mortgage Corporation is Samuel Cammack. Samuel Cammack is a longtime friend and business associate of the Debtor. The Debtor has borrowed money from Samuel Cammack in the past. On numerous occasions, the Debtor has used Excel to broker mortgages for the Debtor and the Debtor's multiple corporations and partnerships. In fact, the Debtor is currently employed by Samuel Cammack personally as a consultant for Samuel Cammack's construction business. Indeed, Mr. Cammack only became involved in the construction business as the Debtor was sliding into bankruptcy.

23. Rather than the Debtor's bankruptcy estate obtaining the equity interest in and to the San Antonio Property and Westleton Property, the equity is now being held by a business owned and operated by the Debtor's friend and close business associate. This was a result of a post-petition transfer.

24. In addition, the Debtor concealed the San Antonio Property and Westleton Property by failing to disclose these properties in his schedules. The Debtor also concealed the Allowances by failing to disclose them in his schedules or his statements of financial affairs. The Trustee and bankruptcy estate learned about these properties only after taking the 2004 examination of Mrs. Hamilton.

25. The Debtor has also concealed the assets of the Hamilton Family Trust. As alleged, hereinbelow, the assets of the Hamilton Family Trust are property of the estate because the Hamilton Family Trust was self-settled by the Debtor. The Trustee's investigation has revealed that the Hamilton Family Trust owned real property in San Antonio which was sold in 2009. This property was sold for approximately \$108,000.00. The Hamilton Family Trust has been unable to account for these proceeds. The Debtor failed to disclose the assets of the Hamilton Family Trust, this property and the proceeds from the sale of this property in his schedules.

26. The Trustee's investigation has also revealed a bank account with Chase Bank in the name of "Estate of John H Hamilton Sr. Debtor". The Debtor used this bank account as recently as April 15, 2011 to pay his country club dues and expenses at the Weston Lakes Country Club. The Debtor failed to disclose this bank account in his schedules.

B. 11 U.S.C. § 727(a)(3) – Denial of Discharge

27. Debtor has concealed, destroyed, mutilated, falsified, or failed to keep or preserve any recorded information, including books, documents, records, and papers, from which the debtor's financial condition or business transactions might be ascertained.

28. Specifically, the Debtor has concealed, destroyed, mutilated, falsified, or failed to keep or preserve the books and records of the Hamilton Family Trust.

29. The Hamilton Family Trust purports to be a Texas spendthrift trust that was settled by the Debtor's mother, Edith Hamilton. Debtor is the primary beneficiary of the Hamilton Family Trust. Upon information and belief, the Hamilton Family Trust was, in fact, settled by the Debtor. Thus, the Hamilton Family Trust is a self-settled trust and the assets of the Hamilton Family Trust are property of the estate.

30. During the Debtor's creditor meeting pursuant to section 341 of the Bankruptcy Code, Debtor represented that he did not have any knowledge with respect to the assets of the Hamilton Family Trust. This turned out to be untrue.

31. Greg Hughes, the former Trustee of the Hamilton Family Trust, testified that when he resigned as the Trustee of the Hamilton Family Trust he left all of the books, records, documents, and papers of the Hamilton Family Trust with the Debtor at the Debtor's place of business. More importantly, Greg Hughes stated that it would surprise him that the Debtor would not have any knowledge about the management of the Hamilton Family Trust since the Debtor made every decision for and managed the trust while Greg Hughes was Trustee.

32. Mr. James Mulder testified that when he became Trustee of the Hamilton Family Trust he did not ask for or receive any of the Trust's books, records, documents or papers. The only documents that he had were the few documents that the Debtor would provide him from time to time.

33. Despite demanding Mr. Hamilton to turnover the books, records, documents and papers of Hamilton Family Trust, Mr. Hamilton has failed to turnover the books, records, documents and papers of the Hamilton Family Trust. Mr. Hamilton has either destroyed these books, records, documents and papers or is concealing them from the Trustee.

C. 11 U.S.C. § 727(a)(4) – Denial of Discharge

34. Debtor knowingly and fraudulently, in or in connection with this bankruptcy case, withheld from the Trustee recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs. Specifically, the Debtor withheld from the Trustee the books, documents, records and papers of the Hamilton Family Trust, the San Antonio Property, the Westleton Property, the Allowances, the transfers to Excel Mortgage

Corporation and Patriot Bank, and other documents.

V.
Prayer

WHEREFORE, Trustee prays that this Court deny any discharge to the Debtor and grant Trustee such other and further relief to which it is entitled.

Date: May 16, 2011

Respectfully submitted,

SNOW FOGEL SPENCE LLP

By: /s/ Aaron M. Guerrero

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COUNSEL FOR RONALD J. SOMMERS, TRUSTEE

CERTIFICATE OF SERVICE

I certify that on 16th day of May, 2011, a true and correct copy of the above and foregoing Trustee's Complaint Objecting to Discharge of the Debtor, John H. Hamilton, Sr. was served upon all parties per the Service List attached as **Exhibit "1"** via the Court's electronic case filing system (ECF) and/or via First Class Mail.

/s/ Aaron M. Guerrero
Aaron M. Guerrero

EXHIBIT "1" – SERVICE LIST**Debtor:**

John H. Hamilton Sr.
P. O. Box 115
Simonton, TX 77476-0115
Via First Class Mail

Debtor's Counsel:

Calvin C. Braun
ORLANDO & BRAUN L.L.P.
3401 Allen Parkway, Suite 101
Houston, TX 77019-1857
*Via ECF: calvinbraun@orlandobraun.com
and First Class Mail*

Governmental Agencies:

Stephen Douglas Statham
OFFICE OF THE U.S. TRUSTEE
515 Rusk Street, Suite 3516
Houston, TX 77002
*Via ECF: Stephen.statham@usdoj.gov
and First Class Mail*

Internal Revenue Service
Centralized Insolvency Operations
P. O. Box 21126
Philadelphia, PA 19114-0326
Via First Class Mail

US Trustee
OFFICE OF THE US TRUSTEE
515 Rusk Street, Suite 3516
Houston, TX 77002-2604
Via ECF and First Class Mail

Ronald J. Sommers,
Chapter 7 Trustee
NATHAN SOMMERS JACOBS
2800 Post Oak Blvd., 61st Floor
Houston, TX 77056
*Via ECF: rsommers@nathansommers.com
and First Class Mail*

20 Largest Unsecured Creditors:

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c/o Karl Burrer
HAYNES & BOONE, LP
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Houston, TX 77010
Via ECF: karl.burrer@haynesboone.com

North Houston Bank
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Via First Class Mail

Imperial Capital Bank
700 N. Central Ave
Glendale, CA 91203
Via First Class Mail

City Bank
5219 City Bank Parkway
Lubbock, TX 79407
Via First Class Mail

Center Capital Corporation
3 Famr Glen Blvd.
Farmington, CT 06032
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Regions Bank
c/o Ann Marie Laney Hill
MCGLINCHY STAFFORD PLLC
1001 McKinney St. Ste. 1500
Houston, TX 77002
Via ECF: amhill@mcglinchey.com

Patriot Bank
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Via First Class Mail

SCS Construction Management, Inc.
c/o J. Hans Barcus
CANTRELL, RAY & BARCUS, LLP
P.O. Box 1019
Huntsville, TX 77342
Via First Class Mail

Bay Area Windham Park, LLC
c/o Michael P. Couch
P. O. Box 365
Fulshear, TX 77441
Via First Class Mail

Bay Area Windham Park, LLC
c/o Mr. Long Hai Nguyen
548 International Blvd., Suite 1
Oakland, CA 94606
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Independence Bank, NA P.O. Box 550289 Houston, TX 77255 <i>Via First Class Mail</i>	DCFS USA LLC 36455 Corporate Dr Farmington Hills, MI 48331 <i>Via First Class Mail</i>
Headwaters Construction Materials c/o Andrew McCormick McCORMICK MCNEAL EDLER & WILLIAMS LP 5909 West Loop South, Ste. 550 Bellaire, TX 77401 <i>Via First Class Mail</i>	Chase Bank One Card Services Westerville, OH 43081 <i>Via First Class Mail</i>
Glen Lowenstein P. O. Box 31339 Houston, TX 77231 <i>Via First Class Mail</i>	

Parties Requesting Notice:

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